

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ECF Case

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ADRIAN HUFF, as Chairman of the Board of Trustees of
TEAMSTERS LOCAL 445 CONSTRUCTION DIVISION
PENSION FUND,

Civil Action No. 07 Civ. 7083
(CLB)(LMS)

Plaintiff

-against-

RODAR ENTERPRISES, INC.,

DEFENDANT'S RULE 56.1
STATEMENT IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Defendant

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Pursuant to Fed.R.Civ.P.R. 56.1, Defendant alleges as its concise Statement of Material Facts that are not in dispute, as follows:

1. Defendant Rodar Enterprises, Inc. entered into and was subject to a collective bargaining agreement ("CBA") with Local Union No. 445, International Brotherhood of Teamsters of Annexed AFL-CIO wherein it was obligated to make contributions to the Teamsters Local 445 Construction Division Pension Fund for the time period July 1, 2002 to June 30, 2005.

2. The Teamsters Local 445 Construction Division Pension Fund was and is a building and construction industry pension fund, and ERISA Section 4203(b) (29 U.S.C. Section 1383) provides a special definition for withdrawal for building and construction employers.

3. Defendant Rodar Enterprises Inc., is a building and construction industry employer, who has contributed to the Teamsters Local 445 Construction Division Pension Plan in the past.

4. ERISA 4203b (29 U.S.C. Section 1383(b)(2)(A) and (B)) provides that a complete withdrawal from a multiemployer plan in the building and construction industry occurs

only if (A) an employer ceases to have an obligation to contribute under the plan and (B) the employer continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or the employer resumes work within five years after the date on which the obligations to contribute under the plan ceased, and does not renew the obligation at the time of resumption.

5. Teamsters Local 445 Construction Division Pension Fund has failed to recognize the special definition for the withdrawal of Rodar Enterprises, Inc., a building and construction industry employer, who has contributed to the Teamsters Local 445 Construction Division Pension Fund. ERISA Section 4203(b) (290 U.S.C. Section 1383).

6. Teamsters Local 445 ("The Union") and Rodar Enterprises, Inc. have been involved in a labor dispute and strike since on or about June 28, 2005 when The Union picketed Rodar Enterprises, Inc.'s job site, and on July 1, 2005 The Union pulled all Local 445 members off of Rodar Enterprises, Inc. job sites.

7. Rodar Enterprises, Inc. has not performed work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required due to the continuing labor dispute with Teamsters Local 445.

8. To date no new collective bargaining agreement has been negotiated between The Union and Rodar Enterprises, Inc., even though Rodar Enterprises, Inc. was and still remains ready, willing and able to negotiate with Teamsters Local 445.

Dated: Lagrangeville, New York
December 28, 2007

Respectfully submitted,
LAW OFFICES OF EDMUND V. CAPLICKI, JR.

By: /s/Edmund V. Caplicki, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that I am not a party to this action and am over 18 years of age. I further certify that on December 28, 2007, a copy of Rule 56.1 Statement in Opposition to Plaintiff's Motion for Summary Judgment was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt including:

William D. Frumkin
Sapir & Frumkin, LLP
399 Knollwood Road, Suite 310
White Plains, NY 10603

Parties may access this filing through the Court's electronic filing system.

/s/ Cynthia J. Sauter
Cynthia J. Sauter